

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICKY R. LOVELIEN,
STEVEN A. STEWART, ERIC J. PARKER,
O. SCOTT DREXLER,

Defendants.

Case No.: 2:16-cr-46-GMN-PAL

ORDER

Pending before the Court is Defendant Ricky R. Lovelien's ("Lovelien's") Motion for Judgment of Acquittal Pursuant to Rule 29(c)(2). (ECF No. 1924). The Government filed a Response. (ECF No. 1976). Lovelien did not file a reply, and the time to do so has now passed.

Also pending before the Court is Defendants Steven A. Stewart ("Stewart"), Eric J. Parker ("Parker"), and O. Scott Drexler's ("Drexler's") Motion for Acquittal Pursuant to Rule 29(c)(2). (ECF No. 1935). The Government filed a Response. (ECF No. 1989). Stewart, Parker, and Drexler did not file a reply, and the time to do so has now passed.

I. BACKGROUND

On March 2, 2016, a federal grand jury sitting in the District of Nevada returned a Superseding Indictment charging nineteen defendants with numerous counts related to a confrontation on April 12, 2014, with Bureau of Land Management ("BLM") Officers in Bunkerville, Nevada. (ECF No. 27). On February 6, 2017, the first trial began with six defendants, including Lovelien, Stewart, Parker, and Drexler (collectively, "Defendants"). At the close of the Government's case-in-chief, Defendants filed Motions for Acquittal Pursuant to Rule 29(a). (ECF Nos. 1794, 1798). On April 3, 2017, after hearing argument on Defendants'

1 motions, the Court denied the motions, finding sufficient evidence that a reasonable jury could
2 find Defendants guilty on all charges. (*See* ECF No. 1804); (Jury Trial Day 23 Tr. 33:15–16,
3 34:1–40:12, ECF No. 1889). The jury began deliberations on April 13, 2017. (ECF No. 1858).
4 On April 24, 2017, the jury rendered a partial verdict, finding co-defendant Gregory Burleson
5 (“Burleson”) guilty as to Counts 5, 6, 8, 9, 12, 14, 15, and 16, and co-defendant Todd Engel
6 (“Engel”) guilty as to Counts 12 and 16. (ECF No. 1887). However, the jury deadlocked on all
7 counts as to Defendants, along with the remaining counts for Burleson and Engel. (*Id.*).
8 Subsequently, the Court made a finding of manifest necessity and declared a mistrial on all
9 deadlocked counts. (*Id.*). The Court set a retrial date of June 26, 2017. (*Id.*).¹ Defendants
10 timely filed the instant Motions for Acquittal on all counts. (ECF Nos. 1924, 1935).

11 **II. LEGAL STANDARD**

12 Under Federal Rule of Criminal Procedure (“FRCP” or “Rule”) 29, if a jury fails to
13 return a verdict, a defendant may make a motion within 14 days after the court discharges the
14 jury asking the court to enter a judgment of acquittal. Fed. R. Crim. P. 29(c)(1)–(2). The
15 Supreme Court has created a two-part inquiry for determining whether a jury verdict can
16 withstand a defendant’s challenge based on the sufficiency of the evidence. *See Jackson v.*
17 *Virginia*, 443 U.S. 307, 319 (1979). First, the evidence must be viewed in the light most
18 favorable to the prosecution. *Id.*; *United States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir. 2010).
19 Then, the district court must determine whether, in that light, the evidence “is adequate to allow
20 ‘any rational trier of fact [to find] the essential elements of the crime beyond a reasonable
21 doubt.’” *Nevils*, 598 F.3d at 1164 (quoting *Jackson*, 443 U.S. at 319).

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25 ¹ Burleson and Engel’s outstanding counts have since been dismissed on the Government’s motion. (*See* ECF
Nos. 1998, 2012). Only the four Defendants bringing the instant motions are set to proceed for retrial, which
will now begin on July 10, 2017, pursuant to the parties’ stipulation. (*See* ECF No. 2053).

1 **III. DISCUSSION**


2 Defendants' Motions predominantly reassert the same arguments promulgated on the
3 Rule 29(a) motions that the Government "failed to prove the elements of each crime charged in
4 the [Superseding] Indictment." (Lovelien Rule 29(a) Mot. Acquittal 3:24–25, ECF No. 1798);
5 (Lovelien Rule 29(c) Mot. Acquittal 3:23–24, ECF No. 1924); *compare also* (Stewart, Parker,
6 Drexler Rule 29(a) Mot. Acquittal, ECF No. 1794) *with* (Stewart, Parker, Drexler Rule 29(c)
7 Mot. Acquittal, ECF No. 1935) (varying only in legal standard, with both motions providing
8 identical factual and legal argument that the evidence presented at trial was insufficient for any
9 reasonable jury to convict Stewart, Parker, and Drexler). The standard for a judgment of
10 acquittal is the same regardless of when the motion is made, be it at the end of the
11 Government's case-in-chief or after the jury has been discharged. The court is to direct
12 acquittal "if the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a). The
13 Court has already thoroughly examined the evidence provided by the Government in ruling on
14 the Rule 29(a) motions and found that a rational trier of fact could find Defendants guilty of the
15 crimes charged. (Jury Trial Day 23 Tr. 33:15–16, 34:1–40:12). Defendants do not argue and
16 the Court does not find any reasonable basis to determine that any evidence provided in
17 Defendants' case-in-chief rebuts the sufficiency of any charged count.² Accordingly, the Court
18 finds that, viewing the evidence in the light most favorable to the Government, a rational jury
19 could find the essential elements of the crimes charged in the Superseding Indictment. *See*
20 *Jackson*, 443 U.S. at 319.

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24 ² To the extent that Lovelien's motion also suggests that the jury's deadlock changes the Court's analysis
25 regarding entering a judgment of acquittal, the Court disagrees. A deadlocked jury does not conclusively
establish a finding of guilty or not guilty, and Rule 29(c) does not provide a different standard for the enumerated
situation of a jury failing to return a verdict.

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Defendants' Motions for Acquittal (ECF No. 1924,
3 1935) are **DENIED**.

4 **DATED** this 9 day of June, 2017.

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8 Gloria M. Navarro, Chief Judge
9 United States District Court
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